Lim Chee Cheng & Ors v Pentadbir Tanah Daerah Seberang Perai Tengah, Bukit Mertajam

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO P-01-144 OF 1995
NH CHAN, ABU MANSOR AND AHMAD FAIRUZ JJCA
18 FEBRUARY 1999

Land Law *— Acquisition of land — Quantum of award — Appeal against decision of High Court — High Court confirmed award of collector of land — Whether valid to reject comparables of appellant's valuer — Whether valid in deciding that there was no industry on land*

The subject land was gazetted on 6 June 1991 and acquired for the purpose of industrial development. The area of the subject land was 145.9721 acres and the whole land was to be acquired. Before it was gazetted, it was zoned as agriculture land. The appeal was on the quantum of the award. The appellant was dissatisfied with the amount the learned High Court judge awarded, RM96 per square foot, upholding the award of the Collector of Land Seberang Perai Tengah, Bukit Mertajam. The appellant contended that the award of the collector was on the low side and that the learned High Court judge erred in confirming it. The appellant argued that the learned judge erred because: (i) he made a finding that there was no industry found on the subject land; and (ii) he had rejected comparables used by the appellant's valuer.

Held, dismissing the appeal:

(1) The government valuer had mentioned, in coming to his valuation, the existence of Permatang Tinggi Industrial estate. The collector and the learned judge had paid due regard to the government's valuation report before coming to their decision (see p 215H).

(2) The learned judge had correctly preferred the comparables used by the government valuer. The comparables used by the appellant's valuer were unsuitable because they were estate land, like the subject land, but of small lots. The learned judge had also set out the reason why he came to the conclusion that the subject land was about RM32,000 per acre after having made suitable adjustment with regard to previous sales of other comparables and their relative distances to the subject land. The learned judge was more than generous, in arriving at a decision that the subject land was valued at RM36,400 per acre (see p 216B–D).

[Bahasa Malaysia summary

Tanah subjek telah diwartakan pada 6 Jun 1991 dan diambil untuk tujuan pembangunan perindustrian. Luas tanah subjek adalah 145.9721 ekar dan seluruh tanah tersebut akan diambil. Sebelum ia

diwartakan, ia telah dizonkan sebagai tanah pertanian. Rayuan adalah berkenaan dengan kuantum award. Perayu tidak puas hati dengan jumlah yang diawardkan oleh hakim Mahkamah Tinggi yang arif iaitu RM96 sekaki persegi, mengesahkan keputusan Pemungut Tanah Seberang Perai Tengah, Bukit Mertajam. Perayu menegaskan bahawa award pemungut adalah pada skala rendah dan hakim Mahkamah Tinggi yang arif silap dalam mengesahkannya. Perayu menghujahkan bahawa hakim yang arif silap kerana: (i) beliau memutuskan bahawa tidak terdapat industri di tanah subjek tersebut; dan (ii) beliau telah menolak perbandingan yang digunakan oleh penilai perayu.

Diputuskan, menolak rayuan:

(1) Penilai kerajaan telah menyebut dalam mencapai penilaian beliau, mengenai kewujudan estet Perindustrian Permatang Tinggi. Pemungut dan hakim yang arif telah mengambil kira dengan sewajarnya akan laporan penilaian kerajaan sebelum mencapai keputusan-keputusan mereka (lihat ms 215H).

(2) Hakim yang arif telah dengan betul memilih perbandingan yang digunakan oleh penilai kerajaan. Perbandingan-perbandingan yang digunakan oleh penilai perayu adalah tidak sesuai kerana ia adalah untuk tanah estet, seperti tanah subjek tersebut, tetapi lot-lot yang lebih kecil. Hakim yang arif telah juga memberikan alasan mengapa beliau mencapai keputusan bahawa tanah subjek tersebut adalah lebih kurang RM32,000 seekar setelah membuat penyelarasan yang sesuai dengan mengambil kira jualan-jualan perbandingan terdahulu yang lain dan jarak secara relatif kepada tanah subjek tersebut. Hakim yang arif telah lebih daripada murah hati, di dalam mencapai keputusan bahawa tanah subjek tersebut adalah dinilaikan pada RM36,400 seekar (lihat ms 216B–D).]

Notes

For cases on land acquisition, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1305–1472.

Appeal from: High Court, Pulau Pinang (Land Acquisition No 15–11–1992)

R Rajasingam (*R Rajasingam & Co*) for the appellant.

Alizatul Khair bte Osman Khairuddin (*Che Mohd Ruzima bin Ghazali* with her) (State Legal Adviser, Penang) for the respondent.

Abu Mansor JCA (delivering judgment of the court): Before proceeding to hear the appeal proper we have to deal with the motion filed by Mr Rajasingam, the appellant's counsel. The appellant contended that s 214 of the National Land Code 1965 did not apply to Penang unless it was adopted. There was no such adoption. Dato' Alizatul, the State Legal Adviser Penang, on the other hand, contended correctly in our view, that as the National Land Code 1965 was enacted by Parliament at the request of all States under art 76(4) of the Federal Constitution for the sake of

A uniformity, the question of adoption did not arise. Finally, Mr Rajasingam agreed, if indeed it came under cl (4) of the above article, then there is therefore no need for any adoption. We agreed with the substance of Dato' Alizatul's submission and dismissed the applicant's motion with cost.

We then proceeded to hear the appeal proper. The appeal was on the B quantum of the award. The appellant was dissatisfied with the amount the learned High Court judge awarded, RM96 per square foot, upholding the award of the collector of land Seberang Perai Tengah, Bukit Mertajam. The appellant contended that the award of the collector was on the low side and that the learned High Court judge erred in confirming it. He prayed that we disturb it.

C The subject land was Lot 722 Mukim 13, Daerah Seberang Perai Tengah. The subject land was gazetted on 6 June 1991 and acquired for the purpose of industrial development. The area of the subject land was 145.9721 acres and the whole land was to be acquired.

The subject land was fronting the road, Jalan Permatang Tinggi – Bukit D Minyak. It is to the south-east of the town of Butterworth and about seven kilometers to the west of the town of Bukit Mertajam. It is adjacent to Kampung Baru Juru, a housing estate of Juru and Permatang Tinggi. The subject land was estate land over 100 acres in area planted with palm oil and rubber. The land was about three feet above the level of the road. The land was served by laterite road and had good drainage system. Before it was E gazetted it was zoned as agriculture land.

The area was served with electrical, water and telephone facilities although the subject land was yet to be so connected. Available was bus and taxi service, serving the main roads. The land was provided with infrastructure for collection of oil palm fruits. There was a temporary house F for the estate manager which served also as a store for manure and equipment.

Mr Rajasingam, on behalf of the appellant advanced several grounds. His first ground was that the learned judge erred in arriving at his award, and, at p 25 of the appeal record, in his judgment the learned judge said:

G Tidak terdapat perindustrian di sekitar tanah terlibat.'
[Translated: 'there is no industry found on the subject land.]

Whereas, according to p 49 of the appeal record, so says Mr Rajasingam, there is Bukit Tengah Industrial area to the north of the subject land and the learned judge failed to take this factor into account. Finally, H Mr Rajasingam conceded that at p 57 of the appeal record the government valuer had mentioned, in coming to his valuation, the existence of Permatang Tinggi Industrial estate. We think the collector and the learned judge paid due regard to the government valuation report before coming to their decision.

I The second ground of complaint raised by appellant's counsel was that the learned judge erred, at p 24 of the appeal record, when he rejected comparables used by the appellant's valuer in map 'F1' in exh 'B'. The reason given by the learned judge rejecting them as comparables was

because of their distance from the subject land, they being far from the subject land but much more nearer to the town of Kepala Batas, which is situated far to the north of the subject land.

We are of the view that the learned judge had correctly rejected those comparables and preferred those comparables used by the government valuer. We found this ground of appeal lacked merit. We therefore endorsed what had been said by the learned judge in his judgment at p 24 that comparables used by the appellant's valuer were unsuitable because they were estate land, like the subject land, but of small lots and therefore not suitable.

At p 25 and p 26 of his grounds of judgment, the learned judge had set out the reason why he came to the conclusion that the subject land was about RM32,000 per acre after having made suitable adjustment in regard to previous sales of other comparables and their relative distances to subject land. And at p 27 of his grounds of judgment, the learned judge was more than generous, in arriving at a decision that the subject land, after his careful analysis, was valued at RM36,400 per acre.

Finally at p 29 of his grounds of judgment, after pointing to the absence of direct comparison to the subject land as it was an estate and consequently could in no way easily be compared with sales of small lots, the learned judge ended by saying that the value of the subject land, in his earnest view, could not be more than RM40,000 per acre. He also concluded that the award of the collector was fair and reasonable and does not deserve to be increased. He confirmed the collector's award and dismissed their appeal. Likewise since the learned judge had not erred in any way, we have no quarrel with the award of the learned judge and we dismissed the appellant's appeal.

Appeal dismissed.

Reported by Benjamin Yong